

Executive Summary – Enforcement Matter – Case No. 49613
INDUSTRIAL ASPHALT, LLC
RN103140695
Docket No. 2014-1655-EAQ-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

EAQ

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Hays Quarry, 6025 Farm-to-Market Road 967, Buda, Hays County

Type of Operation:

Quarry

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: July 1, 2016

Comments Received: No

Penalty Information

Total Penalty Assessed: \$23,175

Amount Deferred for Expedited Settlement: \$4,635

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$18,540

Total Due to General Revenue: \$0

Payment Plan: N/A

Supplemental Environmental Project ("SEP") Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - Unclassified

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: July 23, 2014 and August 4, 2014

Date(s) of NOE(s): October 1, 2014

Executive Summary – Enforcement Matter – Case No. 49613
INDUSTRIAL ASPHALT, LLC
RN103140695
Docket No. 2014-1655-EAQ-E

Violation Information

1. Failed to obtain approval of a modification to an approved Water Pollution Abatement Plan ("WPAP") prior to initiating construction of the modification. Specifically, an unpaved service in-plant road, unpaved parking areas, and an unpaved expansion of the weigh station/entrance road totaling approximately 2.25 acres were constructed without review or approval [30 TEX. ADMIN. CODE § 213.4(j)(3) and WPAP No. 11-10110302 Standard Condition No. 6].

2. Failed to maintain the best management practices ("BMPs"). Specifically, BMPs were not maintained around sensitive features S-86, S-97, and S-151. Additionally, these three sensitive features were removed and the buffer zone was not maintained [30 TEX. ADMIN. CODE § 213.4(k) and WPAP No. 11-10110302 Standard Conditions No. 2].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

- a. Within 30 days:
 - i. Update operational procedures and conduct employee training to ensure that BMPs and buffer zones around sensitive features are maintained; and
 - ii. Submit a WPAP modification application which reflects the current Site conditions along with the associated application fee.
- b. Within 45 days, submit written certification of compliance with a.
- c. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the WPAP application within 30 days after the date of such requests or by any other deadline specified in writing.
- d. Within 120 days, obtain approval of a Edwards Aquifer WPAP modification for the Site.
- e. Within 135 days, submit written certification of compliance with d.

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RN103140695
Docket No. 2014-1655-EAQ-E

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Had Darling, Enforcement Division,
Enforcement Team 1, MC 169, (512) 239-2520; Michael Parrish, Enforcement Division,
MC 219, (512) 239-2548
TCEQ SEP Coordinator: N/A
Respondent: Chuck Fuller, Vice President, INDUSTRIAL ASPHALT, LLC, 9020
North Capitol of Texas Highway, Building 2, Suite 250, Austin, Texas 78759
Anne Lee Benedict, Secretary, INDUSTRIAL ASPHALT, LLC, 9020 North Capitol of
Texas Highway, Building 2, Suite 250, Austin, Texas 78759
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	20-Oct-2014	Screening	21-Oct-2014	EPA Due	
	PCW	5-Nov-2014				

RESPONDENT/FACILITY INFORMATION

Respondent	INDUSTRIAL ASPHALT, LLC		
Reg. Ent. Ref. No.	RN103140695		
Facility/Site Region	11-Austin	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	49613	No. of Violations	2
Docket No.	2014-1655-EAQ-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Lanae Foard
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$22,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	3.0% Enhancement	Subtotals 2, 3, & 7	\$675
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Notes: Enhancement for two NOV's with dissimilar violations and a reduction for one notice of intent.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$810		
Estimated Cost of Compliance	\$12,750		

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$23,175
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$23,175
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$23,175
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DEFERRAL	20.0% Reduction	Adjustment	-\$4,635
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$18,540
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Screening Date 21-Oct-2014

Docket No. 2014-1655-EAQ-E

PCW

Respondent INDUSTRIAL ASPHALT, LLC

Policy Revision 4 (April 2014)

Case ID No. 49613

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN103140695

Media [Statute] Edwards Aquifer

Enf. Coordinator Lanae Foard

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	1	-1%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 3%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

Enhancement for two NOVs with dissimilar violations and a reduction for one notice of intent.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 3%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 3%

Screening Date 21-Oct-2014
Respondent INDUSTRIAL ASPHALT, LLC
Case ID No. 49613
Reg. Ent. Reference No. RN103140695
Media [Statute] Edwards Aquifer
Enf. Coordinator Lanae Foard
Violation Number 1

Docket No. 2014-1655-EAQ-E

PCW

Policy Revision 4 (April 2014)
PCW Revision March 26, 2014

Rule Cite(s) 30 Tex. Admin. Code § 213.4(j)(3) and Water Pollution Abatement Plan ("WPAP")
No. 11-10110302 Standard Condition No. 6

Violation Description

Failed to obtain approval of a modification to an approved WPAP prior to initiating construction of the modification, as documented during an investigation conducted on July 23 and August 4, 2014. Specifically, an unpaved service in-plant road, unpaved parking areas, and an unpaved expansion of the weigh station/entrance road totaling approximately 2.25 acres were constructed without review or approval.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 15.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 3 90 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$11,250

Three monthly events are recommended from the investigation date (July 23, 2014) to the screening date (October 21, 2014).

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$11,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$795

Violation Final Penalty Total \$11,588

This violation Final Assessed Penalty (adjusted for limits) \$11,588

Economic Benefit Worksheet

Respondent INDUSTRIAL ASPHALT, LLC
Case ID No. 49613
Reg. Ent. Reference No. RN103140695
Media Edwards Aquifer
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$12,500	23-Jul-2014	30-Oct-2015	1.27	\$795	n/a	\$795

Notes for DELAYED costs

Estimated cost (\$10,000 modification fee and \$2,500 for the cost to develop and submit the application) to obtain approval of the modification. Date required is the investigation date. Final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$12,500

TOTAL

\$795

Screening Date 21-Oct-2014
Respondent INDUSTRIAL ASPHALT, LLC
Case ID No. 49613

Docket No. 2014-1655-EAQ-E

PCW

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN103140695

Media [Statute] Edwards Aquifer

Enf. Coordinator Lanae Foard

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 213.4(k) and WPAP No. 11-10110302 Standard Conditions No. 2

Violation Description

Failed to maintain the best management practices ("BMPs"), as documented during an investigation conducted on July 23 and August 4, 2014. Specifically, BMPs were not maintained around sensitive features S-86, S-97, and S-151. Additionally, these three sensitive features were removed and the buffer zone was not maintained.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violations.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 3

90 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$11,250

Three quarterly events, one for each location, are recommended from the investigation date (July 23, 2014) to the screening date (October 21, 2014).

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$11,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$16

Violation Final Penalty Total \$11,588

This violation Final Assessed Penalty (adjusted for limits) \$11,588

Economic Benefit Worksheet

Respondent INDUSTRIAL ASPHALT, LLC

Case ID No. 49613

Reg. Ent. Reference No. RN103140695

Media Edwards Aquifer

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$250	23-Jul-2014	30-Oct-2015	1.27	\$16	n/a	\$16
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to update operational procedures and conduct employee training to ensure that BMPs and buffer zones around sensitive features are maintained. Date required is the investigation date. Final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$250

TOTAL

\$16



Compliance History Report

PUBLISHED Compliance History Report for CN603966698, RN103140695, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN603966698, INDUSTRIAL ASPHALT, LLC **Classification:** SATISFACTORY **Rating:** 2.07

Regulated Entity: RN103140695, HAYS QUARRY **Classification:** UNCLASSIFIED **Rating:** -----

Complexity Points: 9 **Repeat Violator:** NO

CH Group: 04 - Mining

Location: 6025 FM 967 IN BUDA, HAYS COUNTY, TEXAS

TCEQ Region: REGION 11 - AUSTIN

ID Number(s):

AIR NEW SOURCE PERMITS REGISTRATION 55121

AIR NEW SOURCE PERMITS PERMIT 55480

AIR NEW SOURCE PERMITS REGISTRATION 86180

AIR NEW SOURCE PERMITS REGISTRATION 98848

EDWARDS AQUIFER PERMIT 11-03120103

EDWARDS AQUIFER PERMIT 11-10110302

EDWARDS AQUIFER PERMIT 11-03120103A

EDWARDS AQUIFER PERMIT 11-14050802

STORMWATER PERMIT TXR05BN58

AGGREGATES REGISTRATION AP0000287

Compliance History Period: September 01, 2009 to August 31, 2014 **Rating Year:** 2014 **Rating Date:** 09/01/2014

Date Compliance History Report Prepared: December 04, 2014

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: December 04, 2009 to December 04, 2014

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Lanae Foard

Phone: (512) 239-2554

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If **YES** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If **YES**, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

- | | | | | | |
|---|--------------|---|-----------|-----------------|----------|
| 1 | Date: | 04/07/2014 | (1150294) | CN603966698 | |
| | Self Report? | NO | | Classification: | Minor |
| | Citation: | 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
Multi-Sector Industrial General Permit PERMIT | | | |
| | Description: | Failure to implement Best Management Practices (BMPs) sufficient enough to minimize the off-site tracking of raw materials (i.e. dust, particulates, and materials from industrial activity). | | | |
| | | | | | |
| 2 | Date: | 08/07/2014 | (1184502) | CN603966698 | |
| | Self Report? | NO | | Classification: | Minor |
| | Citation: | 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
Multi-Sector Industrial General Permit PERMIT | | | |
| | Description: | Failure to implement Best Management Practices (BMPs) sufficient enough to minimize the off-site tracking of raw materials (i.e. dust, particulates, and materials from industrial activity). | | | |
| | Self Report? | NO | | Classification: | Moderate |
| | Citation: | 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
TXR050000 PERMIT | | | |
| | Description: | The facility failed to implement measures to address soil erosion along the portion of the dry drainage leading to outfall 001. | | | |

F. Environmental audits:

Notice of Intent Date: 08/27/2012 (1035664)
No DOV Associated

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
INDUSTRIAL ASPHALT, LLC
RN103140695**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2014-1655-EAQ-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding INDUSTRIAL ASPHALT, LLC ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a quarry located at 6025 Farm-to-Market Road 967 in Buda, Hays County, Texas (the "Site").
2. The Site adjoins, is contiguous with, surrounds, or is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about October 6, 2014.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Twenty-Three Thousand One Hundred Seventy-Five Dollars (\$23,175) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Eighteen Thousand Five Hundred Forty Dollars (\$18,540) of the administrative penalty and Four

Thousand Six Hundred Thirty-Five Dollars (\$4,635) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to obtain approval of a modification to an approved Water Pollution Abatement Plan ("WPAP") prior to initiating construction of the modification, in violation of 30 TEX. ADMIN. CODE § 213.4(j)(3) and WPAP No. 11-10110302 Standard Condition No. 6, as documented during an investigation conducted on July 23 and August 4, 2014. Specifically, an unpaved service in-plant road, unpaved parking areas, and an unpaved expansion of the weigh station/entrance road totaling approximately 2.25 acres were constructed without review or approval.
2. Failed to maintain the best management practices ("BMPs"), in violation of 30 TEX. ADMIN. CODE § 213.4(k) and WPAP No. 11-10110302 Standard Conditions No. 2, as documented during an investigation conducted on July 23 and August 4, 2014. Specifically, BMPs were not maintained around sensitive features S-86, S-97, and S-151. Additionally, these three sensitive features were removed and the buffer zone was not maintained.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: INDUSTRIAL ASPHALT, LLC, Docket No. 2014-1655-EAQ-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order:
 - i. Update operational procedures and conduct employee training to ensure that BMPs and buffer zones around sensitive features are maintained; and
 - ii. Submit a WPAP modification application which reflects the current Site conditions, along with the associated application fee to:

Water Section Manager
Austin Regional Office
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provisions Nos. 2.a.i and 2.a.ii, in accordance with Ordering Provision No. 2.f below.
 - c. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the WPAP application within 30 days after the date of such requests or by any other deadline specified in writing.
 - d. Within 120 days after the effective date of this Agreed Order, obtain approval of a Edwards Aquifer WPAP modification for the Site.

- e. Within 135 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.d, in accordance with Ordering Provision No. 2.f below.
- f. The written certifications shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance as required by Ordering Provisions Nos. 2.b and 2.e. The certifications shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section Manager
Austin Regional Office
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- 3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
- 4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes

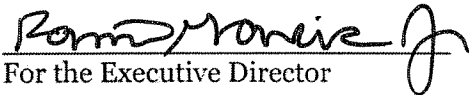
aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

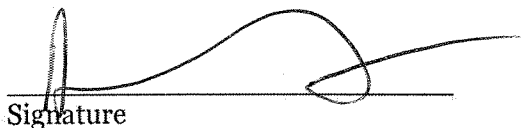
9/2/16
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

April 26, 2016
Date

Anne Lee Benedict
Name (Printed or typed)
Authorized Representative of
INDUSTRIAL ASPHALT, LLC

Secretary
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.